

Effective 5/12/2015

Chapter 8 Utah Housing Corporation Act

Part 1 General Provisions

63H-8-101 Title.

This chapter is known as the "Utah Housing Corporation Act."

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-102 Policy -- Finding and declaration.

- (1) The Legislature declares that the policy of the state is to assure the health, safety, and welfare of its citizens, that an adequate supply of decent, safe, and sanitary housing is essential to the well-being of the citizens of the state, and that an adequate supply of mortgage funds for housing at reasonable interest rates is in the public interest.
- (2) The Legislature finds and declares that:
 - (a) there continues to exist throughout the state a seriously inadequate supply of safe and sanitary dwelling accommodations within the financial means of persons and families of low or moderate income who wish to purchase or rent residential housing;
 - (b) from time to time the high rates of interest charged by mortgage lenders seriously restrict the transfer of existing housing and new housing starts;
 - (c) the reduction in residential construction starts associated with the high rates causes a condition of substantial unemployment and underemployment in the construction industry which impedes the economy of the state and affects the welfare and prosperity of all the people of the state;
 - (d) these conditions associated with the recurrent shortages of residential mortgage funds contribute to slums and blight in the cities and rural areas of the state and ultimately to the deterioration of the quality of living conditions within the state;
 - (e) in accordance with the purpose of this chapter to assist in providing housing for low and moderate income persons who otherwise could not achieve decent, safe, and sanitary housing, the corporation shall make every effort to make housing available in rural, inner city, and other areas experiencing difficulty in securing construction and mortgage loans, and to make decent, safe, and sanitary housing available to low income persons and families;
 - (f) in order to assure an adequate supply of private capital for this housing, the cooperation between private enterprise and state government is essential and is in the public interest;
 - (g) low and moderate income persons in Utah have a wide range of housing needs, which necessitates the development of many different kinds of programs to address those needs, including programs providing mortgage loans, nontraditional loans, grants, and other forms of financial assistance, and combinations of these forms;
 - (h) there are private organizations and governmental entities throughout Utah that are endeavoring to improve the availability of housing for low and moderate income persons and families, but many of these organizations and entities lack expertise and financial resources to act efficiently and expeditiously in these efforts;
 - (i) innovative programs that bring together resources from the public, nonprofit, and private sector are necessary in order to increase the supply of housing for low and moderate income

persons and families, but these programs usually need advice and financial assistance to become established;

- (j) all of the foregoing are public purposes and uses for which money may be borrowed, expended, advanced, loaned, or granted, and that these activities serve a public purpose in improving or otherwise benefiting the people of this state, and that the necessity of enacting the provisions in this chapter is in the public interest and is so declared as a matter of express legislative determination; and
 - (k) the compelling need within the state for the creation of an adequate supply of mortgage funds at reasonable interest rates and for other kinds of financial assistance to help provide affordable housing for low and moderate income individuals can be best met by the establishment of an independent body corporate and politic, constituting a public corporation, vested with the powers and duties specified in this chapter.
- (3) The Legislature declares that the corporation is intended to operate:
- (a) with the power to issue tax exempt bonds to finance the purchase of mortgage loans to qualified buyers;
 - (b) as a financially independent body; and
 - (c) so that its debts shall be payable solely from payments received by the corporation from mortgage borrowers and other revenues generated internally by the corporation.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-103 Definitions.

As used in this chapter:

- (1) "Bonds," "notes," and "other obligations" mean bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness of the corporation authorized to be issued under the provisions of this chapter.
- (2) "Construction loan" means a short-term advance of money for the purpose of constructing residential housing for low and moderate income persons.
- (3) "Corporation" means the Utah Housing Corporation created by Section 63H-8-201, which, prior to July 1, 2001, was named the Utah Housing Finance Agency.
- (4) "Employee of the corporation" means an individual who is employed by the corporation but who is not a trustee of the corporation.
- (5) "Financial assistance" includes:
 - (a) a loan, whether interest or noninterest bearing, secured or unsecured;
 - (b) a loan that converts to a grant upon the occurrence of specified conditions;
 - (c) a development loan;
 - (d) a grant;
 - (e) an award;
 - (f) a subsidy;
 - (g) a guarantee;
 - (h) a warranty;
 - (i) a lease;
 - (j) a payment on behalf of a borrower of an amount usually paid by a borrower, including a down payment;
 - (k) any other form of financial assistance that helps provide affordable housing for low and moderate income persons; or
 - (l) any combination of Subsections (5)(a) through (k).

- (6) "Housing development" means a residential housing project, which includes residential housing for low and moderate income persons.
- (7) "Housing sponsor" includes a person who constructs, develops, rehabilitates, purchases, or owns a housing development that is or will be subject to legally enforceable restrictive covenants that require the housing development to provide, at least in part, residential housing to low and moderate income persons, including a local public body, a nonprofit, limited profit, or for profit corporation, a limited partnership, a limited liability company, a joint venture, a subsidiary of the corporation, or any subsidiary of the subsidiary, a cooperative, a mutual housing organization, or other type of entity or arrangement that helps provide affordable housing for low and moderate income persons.
- (8) "Interest rate contract" means an interest rate exchange contract, an interest rate floor contract, an interest rate ceiling contract, or another similar contract authorized in a resolution or policy adopted or approved by the trustees.
- (9) "Local public body" means the state, a municipality, county, district, or other subdivision or instrumentality of the state, including a redevelopment agency and a housing authority created under Title 35A, Chapter 8, Part 4, Housing Authorities.
- (10) "Low and moderate income persons" means individuals, irrespective of race, religion, creed, national origin, or sex, as determined by the corporation to require such assistance as is made available by this chapter on account of insufficient personal or family income taking into consideration factors, including:
 - (a) the amount of income that persons and families have available for housing needs;
 - (b) the size of family;
 - (c) whether a person is a single head of household;
 - (d) the cost and condition of available residential housing; and
 - (e) the ability of persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing decent, safe, and sanitary housing.
- (11) "Mortgage" means a mortgage, deed of trust, or other instrument securing a mortgage loan and constituting a lien on real property (the property being held in fee simple or on a leasehold under a lease having a remaining term, at the time the mortgage is acquired, of not less than the term for repayment of the mortgage loan secured by the mortgage) improved or to be improved by residential housing, creating a lien that may be first priority or subordinate.
- (12) "Mortgage lender" means a bank, trust company, savings and loan association, credit union, mortgage banker, or other financial institution authorized to transact business in the state, a local public body, or other entity, profit or nonprofit, that makes mortgage loans.
- (13) "Mortgage loan" means a loan secured by a mortgage, which loan may bear interest at either a fixed or variable rate or which may be noninterest bearing, the proceeds of which are used for the purpose of financing the construction, development, rehabilitation, purchase, or refinancing of residential housing for low and moderate income persons.
- (14) "Rehabilitation" includes the reconstruction, rehabilitation, improvement, and repair of residential housing.
- (15) "Residential housing" means a specific work or improvement within the state undertaken primarily to provide dwelling accommodations, including land, buildings, and improvements to land and buildings, whether in one to four family units or multifamily units, and other incidental or appurtenant nonhousing facilities, or as otherwise specified by the corporation.
- (16) "State" means the state of Utah.
- (17) "State housing credit ceiling" means the amount specified in Subsection 42(h)(3)(C) of the Internal Revenue Code for each calendar year.

Renumbered and Amended by Chapter 226, 2015 General Session

Part 2 Organization

63H-8-201 Creation -- Trustees -- Terms -- Vacancies -- Chair -- Powers -- Quorum -- Per diem and expenses.

- (1)
 - (a) There is created an independent body politic and corporate, constituting a public corporation, known as the "Utah Housing Corporation."
 - (b) The corporation may also be known and do business as the:
 - (i) Utah Housing Finance Association; and
 - (ii) Utah Housing Finance Agency in connection with a contract entered into when that was the corporation's legal name.
 - (c) No other entity may use the names described in Subsections (1)(a) and (b) without the express approval of the corporation.
- (2) The corporation is governed by a board of trustees composed of the following nine trustees:
 - (a) the executive director of the Department of Workforce Services or the executive director's designee;
 - (b) the commissioner of the Department of Financial Institutions or the commissioner's designee;
 - (c) the state treasurer or the treasurer's designee; and
 - (d) six public trustees, who are private citizens of the state, as follows:
 - (i) two people who represent the mortgage lending industry;
 - (ii) two people who represent the home building and real estate industry; and
 - (iii) two people who represent the public at large.
- (3) The governor shall:
 - (a) appoint the six public trustees of the corporation with the consent of the Senate; and
 - (b) ensure that:
 - (i) the six public trustees are from different counties and are residents of the state; and
 - (ii) not more than three of the public trustees are members of the same political party.
- (4)
 - (a) Except as required by Subsection (4)(b), the governor shall appoint the six public trustees to terms of office of four years each.
 - (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of corporation trustees are staggered so that approximately half of the board is appointed every two years.
- (5)
 - (a) A public trustee of the corporation may be removed from office for cause either by the governor or by an affirmative vote of six trustees of the corporation.
 - (b) When a vacancy occurs in the board of trustees for any reason, the replacement shall be appointed for the unexpired term.
 - (c) A public trustee shall hold office for the term of appointment and until the trustee's successor has been appointed and qualified.

- (d) A public trustee is eligible for reappointment but may not serve more than two full consecutive terms.
- (6)
 - (a) The governor shall select the chair of the corporation.
 - (b) The trustees shall elect from among their number a vice chair and other officers they may determine.
- (7)
 - (a) Five trustees of the corporation constitute a quorum for transaction of business.
 - (b) An affirmative vote of at least five trustees is necessary for any action to be taken by the corporation.
 - (c) A vacancy in the board of trustees does not impair the right of a quorum to exercise all rights and perform all duties of the corporation.
- (8) A trustee may not receive compensation or benefits for the trustee's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-202 Corporation as continuation of agency.

The corporation is a continuation of the Utah Housing Finance Agency and shall:

- (1) possess all rights, title, privileges, powers, immunities, property, and claims of the former Utah Housing Finance Agency; and
- (2) fulfill and perform all obligations of the former Utah Housing Finance Agency, including obligations relating to outstanding bonds and notes.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-203 President and chief executive officer -- Secretary-treasurer -- Powers and duties -- Power to employ experts -- Power to employ independent legal counsel.

- (1)
 - (a)
 - (i) The trustees shall appoint a president who is the chief executive officer of the corporation.
 - (ii) The president:
 - (A) may not be a trustee of the corporation;
 - (B) serves at the pleasure of the trustees; and
 - (C) shall receive compensation as set by the trustees.
 - (b) The president, who shall also be the secretary-treasurer, shall:
 - (i) establish bank accounts and other monetary investments in the name of the corporation; and
 - (ii) administer, manage, and direct the affairs and activities of the corporation in accordance with the policies, control, and direction of the trustees.
 - (c) The president shall approve all accounts for salaries, allowable expenses of the corporation, or of any corporation employee or consultant, and expenses incidental to the operation of the corporation.
 - (d) The president shall perform any other duties as may be directed by the trustees in carrying out this chapter.
- (2)

- (a) The president shall:
 - (i) attend the meetings of the corporation;
 - (ii) keep a record of the proceedings of the corporation; and
 - (iii) maintain and be custodian of:
 - (A) books, documents, and papers filed with the corporation;
 - (B) the minute book or journal of the corporation; and
 - (C) the corporation's official seal.
 - (b) The president may cause copies to be made of minutes and other records and documents of the corporation and may give certificates under seal of the corporation to the effect that those copies are true copies, and a person dealing with the corporation may rely upon those certificates.
- (3)
- (a) The corporation may employ or engage technical experts, independent professionals and consultants, and other officers, agents, or employees, permanent or temporary, as it considers necessary to carry out the efficient operation of the corporation, and shall determine their qualifications, duties, and compensation.
 - (b) The trustees may delegate to one or more of the corporation's agents, representatives, or employees administrative duties that the trustees consider proper.
- (4) The corporation may employ and retain independent legal counsel.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-204 Relation to certain acts.

- (1) The corporation is exempt from:
- (a) Title 51, Chapter 5, Funds Consolidation Act;
 - (b) Title 51, Chapter 7, State Money Management Act;
 - (c) Title 63A, Utah Administrative Services Code;
 - (d) Title 63G, Chapter 6a, Utah Procurement Code;
 - (e) Title 63J, Chapter 1, Budgetary Procedures Act;
 - (f) Title 63J, Chapter 2, Revenue Procedures and Control Act; and
 - (g) Title 67, Chapter 19, Utah State Personnel Management Act.
- (2) The corporation shall comply with:
- (a) Title 52, Chapter 4, Open and Public Meetings Act; and
 - (b) Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-205 Disclosure of interest.

- (1) A trustee, officer, or employee of the corporation who has, will have, or later acquires an interest, direct or indirect, in a transaction with the corporation shall immediately disclose the nature and extent of that interest in writing to the corporation as soon as the trustee, officer, or employee has knowledge of the actual or prospective interest.
- (2)
- (a) This disclosure shall be entered upon the minutes of the corporation.
 - (b) Upon the disclosure, that trustee, officer, or employee may participate in any action by the corporation authorizing the transaction.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-206 Officer or employee -- No forfeiture of office or employment.

Notwithstanding the provisions of any other law, no officer or employee of this state forfeits a state office or state employment by accepting an appointment or by serving as a trustee of the corporation.

Renumbered and Amended by Chapter 226, 2015 General Session

Part 3
Corporation Duties and Powers

63H-8-301 Corporation -- Powers.

The corporation has and may exercise all powers necessary or appropriate to carry out the purposes of this chapter, including:

- (1) to have perpetual succession as a body politic and corporate, constituting a public corporation, and to adopt, amend, and repeal rules, policies, and procedures for the regulation of its affairs and the conduct of its business;
- (2) to sue and be sued in its own name;
- (3) to have an official seal and power to alter that seal at will;
- (4) to maintain an office within the state at a place the corporation designates;
- (5) to adopt, amend, and repeal bylaws and rules that are consistent with this chapter to carry into effect the powers and purposes of the corporation and the conduct of its business;
- (6) to make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter, including contracts or agreements for the servicing and originating of mortgage loans;
- (7) to employ advisers, consultants, and agents, including financial experts, independent legal counsel, and other advisers, consultants, and agents as necessary in the corporation's judgment and to fix their compensation;
- (8) to procure insurance in amounts and from insurers as determined by the corporation against any loss:
 - (a) in connection with its property and other assets, including mortgage loans; and
 - (b) resulting from the failure of an officer, employee, or agent of the corporation in a position of public or private trust;
- (9) to borrow money and to issue bonds and notes or other evidences of indebtedness as provided in this chapter;
- (10) to receive and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used, loaned, granted, and applied to carry out the purposes of this chapter subject to the conditions, if any, upon which the grants and contributions are made, including gifts or grants from a department, agency, or instrumentality of the United States or of this state for any purpose consistent with this chapter;
- (11) to enter into agreements with a local public body, a housing sponsor, a department, agency, or instrumentality of the United States, another state, or this state, or with mortgagors and mortgage lenders for the purpose of administering contracts that provide housing assistance payments, servicing mortgage loans, or planning and regulating and providing for the financing and refinancing, construction, rehabilitation, leasing, management, maintenance,

- operation, sale, or other disposition of residential housing undertaken with the assistance of the corporation under this chapter;
- (12) to exercise all of its remedies following the default under a mortgage loan, including:
 - (a) proceeding with a foreclosure action or private sale to obtain title to the real and personal property held as collateral and taking assignments of leases and rentals;
 - (b) to own, lease, clear, reconstruct, rehabilitate, repair, maintain, manage, and operate this property in preparation for its disposition; and
 - (c) to assign, encumber, sell, or otherwise dispose of this property;
 - (13) to invest money not required for immediate disbursement, including money held in reserve, in a manner consistent with applicable provisions of Title 51, Chapter 7, State Money Management Act;
 - (14) to provide technical and financial assistance to housing sponsors and advisory committees in the development or operation of housing for low and moderate income persons;
 - (15) to gather and distribute data and information concerning the housing needs of low and moderate income families within the various communities of this state;
 - (16) to the extent permitted under a contract with the holders of bonds, notes, and other obligations of the corporation, to consent to a modification with respect to rate of interest, time and payment of an installment of principal or interest security, or other term of a contract, mortgage, mortgage loan, mortgage loan commitment, contract, or agreement of any kind to which the corporation is a party;
 - (17) to the extent permitted under a contract with the holders of bonds, notes, and other obligations of the corporation, to enter into contracts with a mortgagor or housing sponsor containing provisions enabling the mortgagor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment by a department, agency, or instrumentality of the United States or of the state, the reduction can be made without jeopardizing the economic stability of residential housing being financed;
 - (18) to acquire property within the state for the purpose of holding it for subsequent disposition to a housing sponsor or other entity that can use it for residential housing for low and moderate income persons, except that if no person can be found to use it in this manner, the corporation may dispose of the property to any person;
 - (19) to purchase, own and operate residential housing for the benefit, in whole or in part, of low and moderate income persons, if the corporation makes reasonable efforts to sell that residential housing to a housing sponsor;
 - (20) to incorporate or form one or more subsidiaries of the corporation for the purpose of carrying out any of the powers of the corporation and accomplishing any of the purposes of the corporation, to invest in and provide financial assistance to these subsidiaries, to borrow from these subsidiaries, to guarantee the obligations of these subsidiaries, and to enter into agreements with these subsidiaries to carry out any of the corporation's powers under this chapter;
 - (21) to enter into partnership and limited liability company agreements, to purchase and sell interests in housing sponsors, to serve as general partner of a partnership, and to serve as a manager of a limited liability company to carry out any of the corporation's powers under this chapter;
 - (22) to require that persons receiving a mortgage loan or financial assistance from the corporation subject the property involved to restrictive covenants that shall be considered to be running with the land, regardless of whether or not the corporation enjoys privity of estate or whether or not the covenant touches and concerns the burdened property;

- (23) to enter into management agreements with a person or entity for the performance by the person or entity for the corporation of any of its functions or powers, with terms and conditions as may be mutually agreeable;
- (24) to sell, at public or private sale, with or without public bidding, a mortgage loan or other obligation held by the corporation;
- (25) to sell or convey real property owned by the corporation to low or moderate income persons and housing sponsors, without consideration if the sale or conveyance will inure primarily to the benefit of low or moderate income persons living in a housing development;
- (26) upon making a determination that the financial status of a housing development will jeopardize an economic interest of the corporation in the housing development, to assume managerial and financial control of the property or the owner and to supervise and prescribe the activities of the property or the owner in a manner and under terms and conditions as the corporation may stipulate in a contract;
- (27) to supervise housing sponsors of housing developments;
- (28) to service mortgage loans secured by property in Utah or another state;
- (29) to give consideration to activities that promote the availability of accessible housing; and
- (30) to do an act necessary or convenient to the exercise of the corporation's powers under this chapter.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-302 Corporation -- Additional powers.

- (1) To accomplish the declared purposes of this chapter, the corporation has the following powers:
 - (a) to purchase mortgage loans originated by mortgage lenders or local public bodies made for the purpose of financing the construction, development, rehabilitation, refinancing, or purchase of residential housing for low and moderate income persons;
 - (b) to make mortgage loans and to provide financial assistance to housing sponsors for the purpose of financing the construction, development, rehabilitation, refinancing, or purchase of residential housing for low and moderate income persons;
 - (c) to make mortgage loans and provide financial assistance to housing sponsors for the purpose of financing the operations of a housing development that are necessary or desirable to enable the housing development to remain available as residential housing for low and moderate income persons, whether or not the housing development has been financed by the corporation;
 - (d) to provide financial assistance to any housing authority created under Title 35A, Chapter 8, Part 4, Housing Authorities, which housing authorities may enter into commitments for and accept loans for a housing project as defined in Section 35A-8-401; and
 - (e) to make mortgage loans and to provide financial assistance to low and moderate income persons for the construction, rehabilitation, refinancing, or purchase of residential housing.
- (2) The corporation may issue bonds to purchase loans under Subsection (1)(a) only after a determination by the corporation that the loans are not otherwise available upon reasonably equivalent terms and conditions from private lenders.
- (3) Loans for owner-occupied housing made under Subsection (1)(a) may not include a penalty for prepayment.
- (4) The corporation shall make rules or adopt policies and procedures to govern the activities authorized under this section, including:
 - (a) procedures for the submission of requests or the invitation of proposals for the purchase and sale of mortgage loans and the making of mortgage loans;

- (b) rates, fees, charges, and other terms and conditions of originating or servicing mortgage loans in order to protect against a realization of an excessive financial return or benefit by the originator or servicer;
 - (c) the type and amount of collateral, payment bonds, performance bonds, or other security to be provided for construction loans made by the corporation;
 - (d) the nature and amounts of fees to be charged by the corporation to provide for expenses and reserves of the corporation;
 - (e) procedures allowing the corporation to prohibit persons who fail to comply with the rules of the corporation with respect to the operations of a program of the corporation from participating, either directly or indirectly, in the programs of the corporation;
 - (f) the terms and conditions under which the corporation may purchase and make mortgage loans under each program of the corporation;
 - (g) the terms and conditions under which the corporation may provide financial assistance under each program of the corporation;
 - (h) the terms and conditions under which the corporation may guarantee mortgage loans under each program of the corporation; and
 - (i) any other matters related to the duties or exercise of powers under this section.
- (5)
- (a)
 - (i) The trustees of the corporation shall elect the directors, trustees, and members, if any, of each subsidiary.
 - (ii) Service by a trustee of the corporation in any of these capacities does not constitute a conflict of interest for any purpose.
 - (iii) The corporation may delegate any of its powers and duties under this chapter to any subsidiary.
 - (iv) Subsidiaries shall constitute legal entities separate and distinct from each other, the corporation, and the state.
 - (b) A note, bond, and other obligation of a subsidiary shall contain on its face a statement to the effect that:
 - (i) the subsidiary is obligated to pay the note, bond, or other obligation solely from the revenues or other funds of the subsidiary;
 - (ii) neither the corporation, nor the state, nor any of its political subdivisions is obligated to pay the note, bond, or other obligation; and
 - (iii) neither the faith and credit nor the taxing power of the state or its political subdivisions is pledged to the payment of principal, the redemption price of, or the interest on, the note, bond, or other obligation.
 - (c) Upon dissolution of a subsidiary of the corporation, any assets shall revert to the corporation or to a successor to the corporation or, failing this succession, to the state.
- (6)
- (a) The corporation may, with the approval of the state treasurer:
 - (i) enter into interest rate contracts that its trustees determine are necessary, convenient, or appropriate for the control or management of debt or for the cost of servicing debt; and
 - (ii) use corporation funds to satisfy its payment obligations under those contracts.
 - (b) An interest rate contract may contain payment, security, default, termination, remedy, and other terms and conditions that the trustees consider appropriate.
 - (c) An interest rate contract and funds used in connection with an interest rate contract may not be considered a deposit or investment.

Amended by Chapter 164, 2015 General Session
Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-303 Power to issue mortgage credit certificates -- Impact of federal legislation on tax exempt status of corporation bonds.

- (1) In order to accomplish the purposes of this chapter the corporation may issue mortgage credit certificates under 26 U.S.C. Sec. 25, as amended, and has the sole responsibility for issuing or approving the issuance of mortgage credit certificates allowable to the state.
- (2) A power granted to the corporation by this chapter may not be diminished by the enactment of federal legislation that would cause the interest on bonds, notes, or other obligations of the corporation to be subject to taxation under federal law.
- (3) An exemption from state taxation granted in this chapter is not affected by federal legislation described under Subsection (2).

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-304 Power to borrow money and make loans -- Issuance of notes and bonds -- Mortgage backed securities.

- (1) The corporation has the power to borrow money and to issue its notes, bonds, and other obligations in principal amounts as the corporation determines is necessary to provide sufficient money for:
 - (a) the purchase of mortgage loans from mortgage lenders;
 - (b) the making of construction loans;
 - (c) the making of loans to housing authorities;
 - (d) the payment of interest on bonds, notes, and other obligations of the corporation;
 - (e) the establishment of reserves to secure the bonds, notes, and other obligations;
 - (f) the making of mortgage loans;
 - (g) the making of loans to mortgage lenders or other lending institutions with respect to multifamily residential rental housing under terms and conditions requiring the proceeds of these loans to be used by these mortgage lenders or other lending institutions for the making of loans for new multifamily residential rental housing or the acquisition or rehabilitation of existing multifamily residential rental housing;
 - (h) the making of loans for the rehabilitation of residential housing; and
 - (i) all other expenditures of the corporation necessary or convenient to carry out its purposes and powers.
- (2)
 - (a) The corporation may issue notes to renew notes and bonds to pay notes, including interest, and whenever it considers refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes.
 - (b) The refunding bonds may be:
 - (i) sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded; or
 - (ii) exchanged for the bonds to be refunded.
- (3)
 - (a) Except as otherwise expressly provided by the corporation, every issue of the corporation's notes or bonds are general obligations of the corporation payable solely by money of the

corporation, subject only to any agreements with the holders of particular notes or bonds pledging any particular money.

- (b) These bonds or notes may be additionally secured by a pledge of:
 - (i) a grant or contribution from the federal government or a corporation, association, institution, or person; or
 - (ii) money, income, or revenues of the corporation from any source.
- (4)
 - (a) The notes and bonds shall be authorized by resolution or resolutions of the corporation, shall bear the date or dates, and shall mature at the time or times as the resolution or resolutions may provide, except that no note, including any renewals thereof, shall mature more than five years from the date of its original issue, and no bond shall mature more than 50 years from the date of its issue, as provided by the resolution.
 - (b) The notes and bonds shall bear interest at the rate or rates, including variations in the rates, be in denominations, be in a form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in a medium of payment, at the place or places, and be subject to the terms of redemption, including redemption prior to maturity, as provided by the resolution.
 - (c) The notes and bonds of the corporation may be sold by the corporation at public or private sale, and at the price or prices determined by the corporation.
 - (d)
 - (i) The notes and bonds may bear interest at a variable interest rate as provided by the resolution.
 - (ii) The resolution may establish a method, formula, or index by which the interest rate on the notes and bonds is determined.
 - (iii) The resolution may delegate to one or more officers of the corporation the authority to:
 - (A) approve the final interest rates or prices, principal amount, maturities, redemption features, or other terms of the notes or bonds; and
 - (B) approve and execute all documents relating to the issuance of the notes or bonds.
 - (e) In connection with the notes and bonds, the corporation may authorize and enter into agreements or other arrangements with financial, banking, and other institutions for letters of credit, standby letters of credit, surety bonds, reimbursement agreements, remarketing agreements, indexing agreements, tender agent agreements, and other agreements with respect to:
 - (i) securing the notes and bonds;
 - (ii) enhancing the marketability and credit worthiness of the notes and bonds;
 - (iii) determining a variable interest rate on the notes and bonds; and
 - (iv) paying from any legally available source, which may include the proceeds of the notes and bonds, fees, charges, and other amounts coming due with respect to these agreements.
- (5) A resolution authorizing notes or bonds or their issue may contain provisions, which are a part of the contract or contracts with their holders, as to:
 - (a) pledging all or part of the revenues to secure the payment of the notes or bonds or of any issue of the notes or bonds, subject to the agreements with noteholders or bondholders as may then exist;
 - (b) pledging all or part of the assets of the corporation, including mortgages and obligations securing the assets, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to the agreements with noteholders or bondholders as may then exist;
 - (c) the use and disposition of the gross income from mortgages owned by the corporation and payment of principal of mortgages owned by the corporation;

- (d) the setting aside of reserves or sinking funds and their regulation and disposition;
 - (e) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging the proceeds to secure the payment of the notes or bonds or of their issue;
 - (f) limitations on the issuance of additional notes or bonds, including:
 - (i) the terms upon which additional notes or bonds may be issued and secured; and
 - (ii) the refunding of outstanding or other notes or bonds;
 - (g) the procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds to which the holders must consent, and the manner in which the consent may be given;
 - (h) limitations on the amount of money to be expended by the corporation for operating expenses of the corporation;
 - (i) vesting in a trustee or trustees the property, rights, powers, and duties in trust as determined by the corporation, which may include any or all of the rights, powers, and duties of the trustee appointed by the noteholders or bondholders under this chapter and limiting or abrogating the right of noteholders or bondholders to appoint a trustee under this chapter or limiting the rights, powers, and duties of the trustee;
 - (j)
 - (i) defining the acts or omissions to act that constitute a default in the obligations and duties of the corporation to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of default, including as a matter of right the appointment of a receiver;
 - (ii) but the rights and remedies may not be inconsistent with the general laws of the state and other provisions of this chapter; or
 - (k) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.
- (6)
- (a) A pledge made by the corporation is valid, enforceable, and binding from the time when the pledge is made and has a lien priority based on the time of grant or, if more than one lien is granted at a given time, as set forth in the resolution or instrument under which the pledge is made.
 - (b)
 - (i) The revenues, money, or property pledged and then received by the corporation are immediately subject to the lien of the pledge and constitute a perfected lien without any physical delivery or further act.
 - (ii) The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the corporation, irrespective of whether the parties have notice of the lien.
 - (c) Neither the resolution nor any other instrument by which a pledge is created need be recorded.
 - (d) Notwithstanding the provisions of Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions, the corporation shall comply with the provisions of Title 11, Chapter 14, Part 5, Governmental Security Interests, for the creation, perfection, priority, and enforcement of a security interest created by the corporation.
- (7) The corporation, subject to the agreements with noteholders or bondholders as may then exist, has power to use available money to purchase notes or bonds of the corporation, which shall immediately be cancelled unless held for resale, at a price not exceeding:
- (a) if the notes or bonds are redeemable at the time of the purchase, the applicable redemption price plus accrued interest to the next interest payment on the notes or bonds; or

- (b) if the notes or bonds are not redeemable at the time of the purchase, the redemption price applicable on the first date after the purchase that the notes or bonds are subject to redemption plus accrued interest to that date.
- (8)
 - (a) The notes and bonds shall be secured by a trust indenture by and between the corporation and a corporate trustee, which may be a bank having the power of a trust company or a trust company within or without the state.
 - (b) The trust indenture may contain provisions for protecting and enforcing the rights and remedies of the noteholders or bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the corporation in relation to the exercise of its corporate powers and the custody, safeguarding, and application of all money.
 - (c) The corporation may provide by the trust indenture for the payment of the proceeds of the notes or bonds and the revenues to the trustee under the trust indenture or other depository, and for the method of their disbursement, with any safeguards and restrictions as it may determine.
 - (d) All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expenses of the corporation.
 - (e) If the notes or bonds are secured by a trust indenture, the noteholders or bondholders may not have authority to appoint a separate trustee to represent them.
- (9) Whether or not the notes and bonds are of the form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the notes and bonds are negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the notes and bonds relating to registration.
- (10) In the event that any of the trustees or officers of the corporation cease to be trustees or officers of the corporation prior to the delivery of any notes or bonds or coupons signed by the trustees or officers, signatures or facsimiles of trustees or officers signatures are valid and sufficient for all purposes, the same as if the trustees or officers had remained in office until the delivery.
- (11) A trustee or officer of the corporation executing the notes or bonds issued under this chapter is not subject to personal liability or accountability by reason of the issuance of the notes or bonds.
- (12) The corporation may provide for the replacement of lost, destroyed, or mutilated bonds or notes.
- (13) The corporation may sell mortgage loans it has purchased or made for cash or it may exchange mortgage loans for mortgage-backed securities and sell the mortgage-backed securities for cash.

Renumbered and Amended by Chapter 226, 2015 General Session

Part 4

Corporation Assets and Obligations

63H-8-401 Corporation money -- Depositing and paying out -- Power to contract with holders of notes and bonds -- Money held in trust.

(1)

- (a) All money of the corporation, except as otherwise authorized or provided in this chapter, shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under state or federal laws.
 - (b) The money in these accounts shall be paid out on checks or drafts signed by the president or other officers or employees of the corporation or transferred electronically as authorized by the corporation.
 - (c) All deposits of money shall, if required by the corporation, be secured in a manner as the corporation determines to be prudent, and banks and trust companies are authorized to give security for the deposits.
- (2)
- (a) Notwithstanding the provisions of this section, the corporation may contract with the holders of its notes or bonds as to the custody, collection, securing, investment, and payment of any money of the corporation and of any money held in trust or otherwise for the payment of notes or bonds, and to carry out that contract.
 - (b) Money held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of money may be secured in the same manner as money of the corporation, and banks and trust companies may give security for the deposits.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-402 State pledge to holders of notes or bonds.

- (1) The state pledges and agrees with the holders of notes or bonds issued under this chapter that the state will not limit or alter the rights hereby vested in the corporation to fulfill the terms of agreements made with the holders of the notes or bonds or in any way impair the rights and remedies of the holders until the notes and bonds, together with their interest, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged.
- (2) The corporation may include this pledge and agreement of the state in any agreement with the holders of the notes or bonds.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-403 Notes, bonds, other obligations -- Not a debt liability -- Expenses payable from funds provided -- Corporation without authority to incur liability on behalf of state -- Relationship to Governmental Immunity Act of Utah.

- (1)
 - (a)
 - (i) Notes, bonds, and other obligations issued under this chapter are not a debt or liability of the state or of a county, city, town, school district, or other political subdivision of the state.
 - (ii) The notes, bonds, or other obligations do not constitute the loaning of credit of the state or of a county, city, town, school district, or other political subdivision of the state.
 - (iii) The notes, bonds, or other obligations are not payable from money other than that of the corporation.
 - (b) All notes, bonds, or other obligations shall contain on their face a statement to the effect that:
 - (i) the corporation shall pay the note, bond, or obligation solely from the revenues or other money of the corporation;
 - (ii) neither the state nor any of its political subdivisions are obligated to pay the note, bond, or obligation; and

- (iii) neither the faith and credit nor the taxing power of the state or any of its political subdivisions are pledged to the payment of principal, redemption price of, or the interest on, the notes, bonds, or other obligations.
- (2) All expenses incurred in carrying out this chapter are payable solely from funds provided under this chapter, and nothing in this chapter authorizes the corporation to incur indebtedness or liability on behalf of or payable by the state or any of its political subdivisions.
- (3)
 - (a) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to the corporation.
 - (b) Notwithstanding Subsection (3)(a), a claim may not be brought against the state, a public official or employee of the state, another public entity, or a public official or employee of another public entity, based on or arising from:
 - (i) a failure to fulfill a contractual obligation of the corporation;
 - (ii) an act or failure to act by the corporation or its trustees, officers, employees, agents, or representatives; or
 - (iii) failure of the corporation to comply with the requirements of any law or regulation.
 - (c) The provisions of Subsection (3)(b) do not apply to a claim of a current or former officer or employee of the corporation for retirement or insurance benefits.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-404 Corporation property, notes, and bonds -- Tax exemption except corporate franchise tax.

- (1) Property acquired or held by the corporation under this chapter is declared to be public property used for essential public and governmental purposes.
- (2) The property, its income, and notes and bonds issued under this chapter, the interest payable on the notes and bonds, and income derived from the notes and bonds are exempt from taxation of every kind by the state, a county, a municipality, and any other political subdivision of the state, except for the corporate franchise tax.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-405 Corporation notes, bonds, obligations -- Legal investments.

- (1) The notes, bonds, and other obligations issued under the authority of this chapter are securities in which all public officers and public bodies of the state and its political subdivisions, all banks, bankers, savings banks, trust companies, credit unions, savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies and insurance associations, and others carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, pension, profit-sharing and retirement funds, and all other persons who may now or may later be authorized to invest in notes, bonds, or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or within their control.
- (2) These notes, bonds, and other obligations are securities that may properly and legally be deposited with and received by any state, county, or municipal officer, or agency of the state for any purpose for which the deposit of notes, bonds, or other obligations of the state is now or may later be authorized by law.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-406 Annual report to governor and Legislature -- Contents -- Audits.

- (1)
 - (a) The corporation shall, following the close of each fiscal year, submit, by October 1, an annual written report of its activities for the preceding year to the governor and the Retirement and Independent Entities Interim Committee.
 - (b) Each report shall set forth a complete operating and financial statement of the corporation during the fiscal year it covers.
 - (c) At least once each year, an independent certified public accountant shall audit the books and accounts of the corporation.
 - (d) A complete copy of each annual audit report shall be:
 - (i) included in the report to the governor and the Legislature under Subsection (2);
 - (ii) available for public inspection at the corporation's office; and
 - (iii) made available to the public on the corporation's website.
- (2) The corporation shall, each fiscal year, submit a budget of its operations to the Legislature and the governor.
- (3)
 - (a) The corporation shall form an audit committee consisting of no less than three trustees.
 - (b) The audit committee has exclusive authority to:
 - (i) select and engage the independent certified public accountant to audit the corporation; and
 - (ii) supervise the audit.
- (4) The corporation shall provide additional information upon request by the governor, the Legislature, a legislative committee, the legislative auditor general, or the state auditor.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-407 Act not restriction on powers of corporation -- Construed as alternative -- Bonds, notes, obligations issued need not comply with other laws.

- (1)
 - (a) This chapter and its contents are not a restriction or limitation upon other powers that the corporation has under other laws of the state.
 - (b) This chapter is cumulative to the powers referenced in Subsection (1)(a).
- (2) This chapter provides a complete, additional, and alternative method for doing the things authorized in this chapter and is supplemental and additional to powers conferred by other laws.
- (3) The issuance of bonds, notes, and other obligations under this chapter need not comply with the requirements of any other state law applicable to the issuance of bonds, notes, and other obligations.
- (4) Proceedings, notice, or approval are not required for the issuance of bonds, notes, and other obligations or an instrument as security for them, except as provided in this chapter.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-408 Allocation to corporation of mortgage bonds qualified under Internal Revenue Code.

- (1) The entire amount of qualified mortgage bonds allowable to Utah under 26 U.S.C. Sec. 143, and the regulations issued under the code, is allocated to the Utah Housing Corporation which, for purposes of 26 U.S.C. Sec. 143 and the regulations under that section, has sole

responsibility for issuing or approving the issuance of qualified mortgage bonds allowable to Utah.

- (2) The corporation is not required to issue or approve the issuance of qualified mortgage bonds equal in amount to the amount allowed Utah.
- (3) Housing authorities in counties, cities, and towns in Utah may apply under 26 U.S.C. Sec. 143 to the corporation for funding of housing programs within their respective jurisdictions.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-409 Allocation of qualified mortgage bonds to counties, cities, and towns.

- (1)
 - (a) The corporation may allocate all or part of the amount to one or more counties, cities, and towns within the state or to any authority or agency of any entity that is authorized to issue qualified mortgage bonds.
 - (b) An allocation may not be made under this section unless:
 - (i) the entity applies to the corporation for an allocation; and
 - (ii) the corporation finds that the proposed allocation would be in the best interest of the state.
 - (c) The corporation shall take the following factors into consideration before making its finding:
 - (i) the number of "low and moderate income persons," within the meaning of the Utah Housing Corporation Act, within a given area;
 - (ii) the likelihood that the proposed issuing entity would use the allocation to issue qualified mortgage bonds in a timely manner;
 - (iii) the cost to the proposed issuing entity to issue the bonds relative to the cost to the corporation to issue the bonds;
 - (iv) any special costs or benefits which would result from the issuance of the bonds by the proposed issuing entity;
 - (v) the capability of the proposed issuing entity to administer an issuance of qualified mortgage bonds;
 - (vi) the needs of the proposed issuing entity relative to the needs of other counties, cities, and towns;
 - (vii) the effects of the proposed allocation on counties, cities, and towns which are not served by the proposed issuing entity; and
 - (viii) any other factors the corporation considers relevant to a determination of what is in the best interest of the state with regard to single family housing.
- (2)
 - (a) The corporation shall specify the time within which an issuing entity shall use the allocation.
 - (b) Any part of the allocation which is not used within the time prescribed automatically terminates.
 - (c) The corporation may extend the time initially prescribed for use of the allocation.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-410 Low-income housing tax credits.

- (1) The corporation is designated the "Housing Credit Agency" for the state within the meaning of 26 U.S.C. Sec. 42(h) and for the purposes of carrying out 26 U.S.C. Sec. 42 and regulations promulgated under that section.
- (2) The entire state housing credit ceiling for each calendar year is allocated to the corporation.

- (3) The allocation of the state housing credit ceiling shall be made under the state's qualified allocation plan within the meaning of 26 U.S.C. Sec. 42(m), as amended, and as provided in Subsection (4).
- (4) The corporation may amend the state's qualified allocation plan as necessary to comply with revisions to the low-income housing tax credit program under 26 U.S.C. Sec. 42, or as may be necessary to further the goals and purposes of the low-income housing tax credit program for the state.
- (5) The corporation, or a subsidiary of the corporation, may have a direct or indirect ownership interest in, and may materially participate in the operation and management of, a housing development or program that has received an allocation of the state housing credit ceiling.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-411 Asset disposition upon dissolution of corporation.

Upon dissolution of the corporation:

- (1) all liabilities and obligations of the corporation, including obligations to bondholders, shall be paid, satisfied, discharged, or adequately provided for; and
- (2) all remaining money, property, rights, claims, and interests of the corporation shall revert or be conveyed to the state.

Renumbered and Amended by Chapter 226, 2015 General Session